

**BEFORE TELANGANA STATE REAL ESTATE REGULATORY AUTHORITY
[Under the Real Estate (Regulation and Development) Act, 2016]**

COMPLAINT NO.660 OF 2021

17th Day of October, 2023

**Corum: Dr. N. Satyanarayana, IAS (Retd.), Hon'ble Chairperson
Sri Laxmi Narayana Jannu, Hon'ble Member
Sri K. Srinivasa Rao, Hon'ble Member**

Sri Praveen Kumar Pulluri

...Complainant

Versus

M/s Brigade Citadel

...Respondent

The present matter, bearing Complaint No. 660 of 2021, was heard before this Authority in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016, on 8th August 2023, 23rd August 2023 and 21st September 2023. The hearing was conducted in the presence of Complainant (party present in person), Sri Rajesh Manager of the Respondent company and Mr. P Anil appeared on behalf of the Respondent.

2. Upon careful consideration of the arguments presented by both parties, this Authority hereby issues the following **ORDER:**

A. Facts of the Case

3. The facts of the case, in brief, are that the Respondent M/s Brigade Enterprises Limited, had launched "Brigade Citadel-Phase 1, RERA reg no: P02200002237 in the month November 2020 at Moti Nagar, Hyderabad, and the Complainant applied for an Apartment in the said project, unit no A1-1309, Aspen Block on 09.11.2020. The complainant application was accepted by the Respondent company, and for the same the complainant paid an advance amount of Rs. 12, 14,095/-.

4. Subsequently, the Respondents communicated a Draft Agreement of Sale was sent through e-mail. Upon reviewing the Draft Agreement of Sale the clauses were found to be unilateral and are in violation of RERD Act 2016 & Rules. Accordingly, communications were made with the Respondent through series of phone calls to authorised customer care and mails to authorised customer care service email, to raise complaints (ticket no's), to modify the Draft Agreement of Sale, to fulfil the obligations being applicant in the Project, in accordance with the Act & Rules. For the same, the evidences have been placed on record before this Authority. Further submitted that there are unfair practices by the Respondent such as:

- I. Initiating Complaint(ticket) no's on their own with the customer care of the Respondent and closing it instantaneously
- II. Closing of complaints raised by allottee without definitive replies
- III. Communication of agreement of sale prior to issuance of allotment letter,
- IV. Raising invoices/Payments requests without first entering into Agreement of sale in line with Prescribed Agreement of Sale
- V. Threatening as well as blackmailing to allottee to sign the agreement of sale communicated, otherwise forfeiting advance amount paid besides cancellation Allotment.
- VI. Disparity among the allottees in respect of usage of common areas and
- VII. Communications through both e-mails followed by postal services.

5. The response received from the Respondent are not satisfactory enough even after continuous pursuance. Hence, this complaint.

B. Relief Sought(s)

6. Accordingly, the Complainant prayed this Authority;
- i. To direct the respondent to adhere to the RERD Act and Rules.
 - ii. To examine the signed agreement of sale by other allottees of the project, through a committee constituted by the Authority in the interest of the justice.

- iii. Any other relief as deemed appropriate by the Authority (including revoking the registration)

C. Reply by the Respondent:

7. The Complainant booked an Apartment in Brigade Citadel bearing No: A1-1309, having a super-built-up area of 1793 Sq. Ft., 13th Floor, Phase-1, Aspen Tower, by signing an Application on 09-11-2020 for Allotment and has paid a booking amount of Rs. 12,14,095/- (Rupees Twelve Lakhs Fourteen Thousand Hundred and Ninety-Five Only) vide Cheque bearing No. 727387 for Rs. 3,00,000/- drawn on State Bank of India and another Cheque dated 20-11-2020 bearing No. 209342 for Rs. 9,14,095/- drawn on IDBI bank. The Application for Allotment contains basic terms and conditions, which has been duly read and accepted by the Complainant, by signing the same. After receiving the payment of Rs. 12,14,095/- (Rupees Twelve Lakhs Fourteen Thousand Hundred and Ninety-Five Only), the Company has issued Allotment Notice dated 19-03-2021. The Allotment Notice contains a schedule of payment, which has been duly accepted by the Complainant. On the request of the Complainant, the Company had emailed a copy of the Agreement of Sale on 17-02-2021 to the Complainant. Thereafter, the Company allotted the apartment and the Company's representative communicated to the Complainant on 21-03-2021 to sign the Agreement of Sale with a balance payment request, and a link to sign the Agreement was e-mailed to the Complainant. The Complainant reviewed the Agreement of Sale and declined to sign. The Complainant raised a query on the Company's portal with certain observations stating that the Agreement is not as per the format provided by TSRERA. The Company's representative replied that the Agreement of Sale is as per RERA format and is standard across the project and cannot be modified. The end customer Agreement for the Project is standardized & filed before RERA. The Company submits that the Complainant willfully delayed in entering into the Agreement for Sale by giving excuses and raising trivial queries. The Allotment specifically prescribes that the Applicant shall enter into a definitive agreement with the Company within 10 (ten) days from the date of receipt of the agreement by the Complainant. However, even after

providing all the clarifications and sufficient time to sign the Agreement of Sale, the Complainant did not come forward to sign the Agreement. The interest accrued as of 02-09-2022 on the total sale consideration payable by the Complainant is Rs. 7,00,598/- (Rupees Seven Lakhs Five Hundred and Ninety-Eight Only) excluding the applicable GST.

8. That the Complainant repeatedly requested for a discount in the total sale price and requested the Company to sell the apartment at a total price of Rs. 75,00,000/- as against the booking value of Rs. 1,14,73,160/-, which is a reduction of 34.6%. The Company's representative communicated that the Company will not provide any discount. The Company cannot consider any further discount as sought by the Complainant, as it's part of a group booking where a few of the employees of TS TRANSCO along with the Purchaser have booked the apartment in the said project 'Brigade Citadel' at a discounted rate of Rs. 50/- per Sq. Ft., and 20 (twenty) employees apart from the Complainant have signed the Agreement of Sale. Change in terms for one person will result in multiple requests from the group, which the Company cannot afford.

9. The Respondent states that the Agreement for Sale is in compliance with the provisions of RERA act and Telangana State RERA rules. It's adopted across the project without any change to maintain uniformity. The end customer agreement for the Project is standardized and is filed before RERA. The same has been accepted by the banks & financial institutions. Hence, the Company respectfully submits that the Complaint filed by the Complainant is liable to be dismissed in the interests of justice and equity.

D. Hearing Conducted:

10. This Authority called the parties for a hearing on 08.08.2023, 23.08.2023, and on 21.09.2023, where both parties appeared on 21.09.2023 and reiterated the points as mentioned above. During the hearing, the Complainant reiterated the contentions that the drafted Agreement of Sale is not as per the RERA Act & Rules and is biased towards the Respondent, which is against the principles of the RERA Act, 2016. Further that the

Respondent have been sending mail to the Complainant intimating for the cancellation of the apartment and by forfeiting the 10% booking amount along with GST for not signing the Agreement of sale. Because of which complainant is feeling threatened by the Respondent.

11. However, the Respondent refuted the contentions raised by the Complainant, stated that the Agreement of Sale is well within the provisions of RERA Act and Rules and has not deviated from the prescribed standard format. Further, the Respondent submitted that they have followed a standard format of Agreement of Sale that is followed by them in every other state, and no objections have been raised by any allottee or RERA of other states with regard to their Agreement of Sale.

12. Further, Respondent has submitted that they have time again reminded the Complainant to sign the Agreement of Sale, despite clarifying every concerns raised by the complainant, the complainant was not satisfied with any of the replies. As the Respondents refused to provide any more discounts to the Complainant, complainant has raised all these bogus concerns time and again, delayed every payment as per schedule that was acknowledged by him at the very first meet. It is to be noted that the complainant was well aware of every amenities that will be provided in the said unit, but still at the time of the Agreement of sale, the Complainant raised issues that are not relevant. And changing the terms or clauses of the Agreement of sale as per the demands of one complainant is not possible, as every other allottee of the said Unit have executed the same Agreement of sale. It was also submitted that the Respondents time and again been in favour of sorting out the issues and closing the transaction rather than cancelling the same. But the complainant has not come forward with positive aspect.

13. After considering the arguments and evidence presented by both parties, the Authority hereby observes the following:

E. Observations made by the Authority:

Upon meticulous examination of the presented facts and circumstances, the Authority deliberates on the following points:

14. The Complainant contends that the Agreement of Sale provided by the Respondent for the purchased unit does not align with the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERD Act). The Authority concurs with the Complainant's assertion and finds that the Respondent has indeed deviated from the Model Form Agreement of Sale outlined in the RERD Act, 2016.

15. The Authority specifically notes the following discrepancies:

a. Clause 7.1 (a) – Force Majeure:

The inclusion of certain elements in the Force Majeure clause by the Respondent deviates from the Model Agreement of Sale outlined in the Real Estate (Regulation and Development) Act, 2016 (RERD Act, 2016). Respondent's Agreement of Sale is not in line with the prescribed Rules and shall be as per the Real Estate (Regulation and Development) Rules, 2017 (RERD Rules, 2017).

b. Clause 12(1) – Defect Liability: The module Agreement of Sale as per RERD Rules Clause 12(1) states that the aggrieved Allottees shall be entitled to receive appropriate compensation if the Promoter fails to rectify defects within the time period specified under RERD Rules, 2017. Where in Promoter's Agreement of Sale is not in accordance with the RERD Rules, 2017 with regard to the Defect Liability clause, as the Promoter's provided agreement does not address compensating the aggrieved allottee in case of the Promoter's failure to rectify a structural defect. This has to be incorporated.

c. Schedule E – Power of Attorney: The inclusion of Schedule E – Power of Attorney, is not mentioned in the Agreement of Sale as per the Rule 38 Annexure and hence shall be removed.

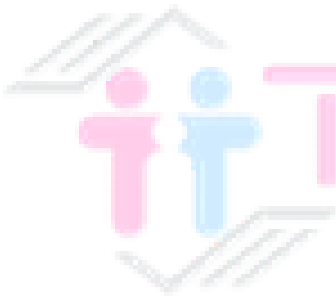
16. The Authority, however, does not have any role in the financial transactions taken place between the parties.

E. DIRECTIONS OF THE AUTHORITY:

17. In light of the above observations, the Respondent is directed to adhere to the Real Estate (Regulation and Development) Act, 2016, and its Rules. The Agreement of Sale must be amended to align with the RERD Act, 2016.

18. If aggrieved by this Order, the parties may approach the TS Real Estate Appellate Tribunal (vide G.O Ms.no.8, dated 11.01.2018, the Telanagana State Value Added Tax Appellate Tribunal has been design nated as TS Real Estate Appellate Tribunal to manage the affairs under the Act till the regular Tribunal is established) within 60 days from the receipt of this Order.

19. The complaint stands disposed of.



Sd/-

**Sri K. Srinivasa Rao, Hon'ble Member
TS RERA**

Sd/-

**Sri Laxmi Narayana Jannu, Hon'ble Member
TS RERA**

Sd/-

**Dr. N. Satyanarayana, IAS (Retd.) Hon'ble Chairperson
TS RERA**